

EXAMPLES OF CONTRACTUAL CLAUSES

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"AS IS" CLAUSE

This clause could be used when the seller wants to sell the property in "as is" condition. The seller must disclose any known defects, as in any other type of sale, but can sell the property in "as is" condition and thereby refuse to make any repairs.

The seller is selling this property in "as is" condition. The seller has disclosed all known defects with the property in the Seller's Disclosure Form. The buyer has the right to make any and all inspections, but the seller will not make or pay for any repairs, corrections or replacements.

AUTHORIZATION FOR AGENT TO SIGN ON BEHALF OF CLIENT

If your client is out of town or cannot physically sign the paperwork for some reason, you may obtain a written authorization from that client to sign on his or her behalf. This should be done sparingly. (Make sure to follow up with the client's original signature as soon as possible.)

The _____ (buyer/seller), _____ (name here), hereby gives authority to his/her agent, _____ (name here) to sign the _____ (document here -- i.e., purchase contract) on behalf of the _____ (buyer/seller) and to bind the _____ (buyer/seller) to that contract. The _____ (buyer/seller) will personally sign the document upon _____ (event here - returning to town, receiving a copy in the mail, etc.)

BACK-UP OFFER

This clause can be used whenever there is already an accepted purchase contract on a piece of property. The language is taken from 201 KAR 11:250, Section 3, which outlines

the required language for back-up offers in Kentucky. The first clause binds the buyer to the contract no matter what. The second clause gives the buyer an out if he or she finds another property.

This offer is submitted as a back-up offer, which means the property is subject to a previously-accepted offer which has priority over this offer.

or

This offer is submitted as a back-up offer, which means the property is subject to a previously-accepted offer which has priority over this offer. If this offer is accepted, the buyer retains the right to continue looking for other acceptable properties. If the buyer finds another acceptable property before this back-up contract becomes the priority offer, the buyer will deliver notice to the seller within ____ hours. Both parties agree to sign a mutual release, returning the earnest money deposit to the buyer. Time is of the essence as to this provision.

CONTINGENCY FOR SALE OF BUYER'S HOME

If the buyer has not sold his/her home and wants to make the contract contingent upon that sale, you may use the following clause. (Note: If the buyer has a home to sell and cannot qualify for financing without selling that home or obtaining a bridge loan, you should make the contract contingent upon such.)

If Buyer's property is currently listed:

This agreement is contingent upon the sale of Buyer's property located at _____ on or before ____:____ o'clock ____m. on the ____ day of _____, 200____. Buyer shall use his best efforts to procure an acceptable purchase contract for this property. Buyer shall then deliver notice to the seller that said purchase contract has been procured. If no such purchase contract is procured, this contract will become null and void. In that event, both parties agree to sign a mutual release, returning the earnest money deposit to the buyer. Time is of the essence as to this provision.

Buyer's property is currently listed exclusively with _____.

or

If Buyer's property is not currently listed:

Buyer will list his property with a licensed real estate agent or broker by the ____ day of _____, 200____.

Notice of this listing will be given to the seller's agent by the _____ day of _____, 200____, or this agreement will be voidable at the option of the seller by giving written notice to the buyer or buyer's agent. Time is of the essence as to this provision.

CONTINGENCY FOR SELLER TO PURCHASE ANOTHER PROPERTY

You can use the following clause when the seller wants to make the offer to purchase contract contingent upon the seller purchasing another property or a specific piece of property.

This contract is contingent upon the seller procuring a purchase contract on the property located at _____. The seller agrees to make reasonable efforts to procure a purchase contract on this property by _____ o'clock ____m. on the _____ day of _____, 200____. If the seller cannot procure a purchase contract on said property and deliver notice of such contract to the buyer within this timeframe, this contract will become null and void. In addition, if, for any reason that is no fault of the seller herein, the purchase contract on said property does not close, this contract will become null and void. Both parties agree to sign a mutual release, returning the earnest money deposit to the buyer. Time is of the essence as to this provision.

or

This contract is contingent upon the seller procuring an offer to purchase contract for another piece of property by _____ o'clock on the ____ day of _____, 200____. If the seller cannot locate another desirable property, obtain a purchase contract on such property and deliver notice to the buyer within this timeframe, this contract will become null and void. Both parties agree to sign a mutual release, returning the earnest money deposit to the buyer. Time is of the essence as to this provision.

DISCLOSURE OF AN INTEREST-BEARING ESCROW ACCOUNT AND TO WHOM THE INTEREST WILL ACCRUE

Kentucky law allows you to place earnest money in an interest-bearing account so long as you disclose in writing to whom the interest will accrue. Please see KRS 324.111(2). You can use the following clause if the parties request the money to be placed into an interest-bearing account.

The buyer and seller hereby authorize _____ (broker name here) to place the earnest money deposit in an interest-bearing escrow account at _____ (bank here). The interest will accrue to the _____ (buyer/seller).

DISCLOSURE OF STATUS AS LICENSEE

If you are purchasing or selling a property, you must disclose your status as a licensee to comply with KRS 324.160(4)(e). You may use the following clause:

_____ (insert name of licensee) is a (buyer/seller/investor) in this transaction.
_____ (insert name) is a licensed real estate (agent/broker) in the State of Kentucky and is representing _____ (himself/herself/the buyer/the seller/both parties) in this transaction.

If you are not acting in a representative capacity (such as selling your own property without a listing or buying a piece of property without accepting commission), but only as an individual, you may use this language:

_____ (insert name of licensee) is a (buyer/seller/investor) in this transaction.
_____ (insert name) is acting as an individual only and is not representing (himself/herself) or any other party in this transaction.

FIRST RIGHT OF REFUSAL ("KICK-OUT CLAUSE")

If the buyer wants to make the contract contingent upon the sale of buyer's home, you may use the following language – in addition to the Contingency for Sale of Buyer's Home, above -- to give the buyer the ability to perform within a certain timeframe.

The buyer and seller agree that the seller retains the right to keep this property on the market and to accept other offers on his property. If the seller accepts another offer, the seller must notify the buyer or buyer's agent by _____ (phone, fax, in person) at _____ (address, fax number, phone number).

The buyer will have _____ (timeframe) from receipt of seller's notice to remove the contingency and provide evidence of his ability to perform the terms of the agreement (i.e., confirmation from the bank as to financing, proof of bridge loan, accepted purchase contract on buyer's property). If buyer cannot supply such evidence, then this agreement is voidable at the option of the seller. If the seller voids the contract, then the earnest money will be returned to the buyer within ____ days. Time is of the essence as to this provision.

UNDISCLOSED OR "STRAW" PURCHASER

The following clause would be used in situations in which the buyer does not want to be revealed to the seller. The first clause could be used when there is a "straw" buyer standing in for the actual buyer. The second clause could be used when the buyer just does not want to be disclosed. If you are going to sign on behalf of the buyer in scenario number 2, the Commission advises you to obtain a power-of-attorney through an attorney and specifically outline the duties the buyer has authorized you to perform.

The Buyer is acting on behalf of an undisclosed purchaser. The buyer has written authority from the undisclosed purchaser to enter into this contract on behalf of the undisclosed purchaser and to bind the undisclosed purchaser to this agreement, if accepted.

or

The buyer wishes to remain anonymous. The agent representing the buyer hereby declares that he/she has a written agreement from the buyer in which the buyer promises to be bound by the terms and conditions of this contract, if accepted. This agreement also authorizes the agent representing the buyer to sign on behalf of the buyer and to bind the buyer to this contract, if accepted. This agreement is hereby made a part of this contract by addendum and will be attached to the contract upon acceptance. The seller hereby acknowledges that he/she accepts this contract without knowledge of the buyer's identity.

WAIVER OF RIGHT TO HOME INSPECTION

This clause should be used after you have explained to your clients the need for and benefit of a home inspection or a termite/wood-destroying insect inspection and they have refused to or waived their rights to obtain one.

The buyer hereby acknowledges that he/she has been advised by his/her real estate agent, _____ (name here), to obtain a _____ (whole-house home or termite or other wood-destroying insect) inspection. The buyer hereby waives his/her right to such an inspection against the advice of his/her real estate agent or broker and agrees to hold harmless the real estate agents or brokers involved in this transaction for any repairs or defects that could have been uncovered by such an inspection.